

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.492 OF 2006
IN
PUBLIC INTEREST PETITION NO.1232 OF 2004

Pratiba Naitthani	.. Petitioner
v/s.	
Union of India and others	.. Respondents
and	
Rajnikant Gaikwad	.. Applicant

Mr.M.M.Vashi for the petitioner.

Mr. Lean Periera i/by Mr. Anil Menon for the respondent No.4.

Mr. B.A. Desai, Additional Solicitor General with Mr. R.A. Rodrigues i/by Dr. T.C. Kaushik for the respondent No.1.

Mr. P.M. Mokashi, Assistant Government Pleader for the respondent No.2.

Mr. Janak Dwarkadas, senior counsel with Mr. Ranjit Shetty i/by M/s.PDS Legal for the respondent No.5.

Mr. D.D. Madon, senior counsel with Mr. H.N. Thakore and Ms.Agnes Baradia i/by M/s.Thakore Jariwala & Associates for the applicant/intervenor Hathway Cable.

Dr. Virendra Tulzapurkar, senior counsel with Mr. S.V. Kadam i/by M/s. Kadam & Co. for the respondent Nos.3 and 7.

Mr. Virag Tulzapurkar, senior counsel with Mr.Sandeep Parekh i/by M/s.Chaturvedi & Associates for the applicant/intervenor.

Mr.A.S. Kamat i/by Mr. Sanjay Bhosale for the applicant intervenor (subscriber).

Mr. G.G. Bhat i/by M/s. ARA Law Associates for intervenor (HBO)

Mr.Vinod Parekh i/by M/s.Hemant Sahai Associates for the respondent No.6.

Mr.Jaisinh Patil i/by Mr. V.M. Thorat for the respondent No.14.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 30TH AUGUST, 2006.

P.C.

We heard the senior counsel and the counsel for the parties for quite some time.

2. An application has been made by Rajnikant Madhav Gaikwad by way of notice of motion. He claims to be subscriber of Indusind Media and Communication Private Limited, carrying out cable network in the name of INCABLE. He has stated that on/or about 21/22nd August, 2006, all the cable channels were completely blacked out. After a day or two, some of the channels have started telecast except the following nine channels:-

- i) AXN
- ii) HBO
- iii) Star Movies
- iv) Star Gold
- v) Star One
- vi) Zee Cinema
- vii) Set Max
- viii) Sahara One
- ix) Sahara Filmy

He has further stated that there is a message flashed across these

channels that, "This channel is off air due to the order of Hon'ble High Court of Mumbai." In the backdrop of these facts, he has prayed that the cable operator Indusind (INCABLE) be directed to telecast the aforesaid nine channels and in the alternative to refund the monies of all the subscribers taken for subscription by them.

3. Copy of this application (notice of motion) has been given to the advocate for the petitioner.

4. During the consideration of the said application, the senior counsel appearing for some of the broadcasters submitted that these broadcasters undertake to beam only "U" and "U/A" Films duly certified by CBFC and are also prepared to provide decoders to MSOs and cable operators for the time being to enable them carry in cable service for "U" and "U/A" films aired by these broadcasters.

5. Mr. M.M. Vashi, the counsel for the petitioner submitted that the applicant has been set up by the cable operators and that the application is not bonafide. He also submitted that until the proceedings for seizure under section 11 of the Cable Television Netword (Regulation) Act, 1995 are taken to logical conclusion and appropriate order is passed by the competent Magistrate, the submissions of the broad casters does not deserve to be considered.

6. We do not think it necessary to deal with the submissions made by the senior counsel for the broadcasters for the present for want of any written application in this regard. As and when proper application is made by the broadcasters, these would be

considered appropriately. However, we find that the message which is flashed across nine channels, "This channel is off air due to the order of the Hon'ble High Court of Mumbai" is clear misrepresentation to the consumer public in general. Neither the order dated 21st December, 2005 nor our order dated 23^d August, 2006 has asked any channel to remain off air. What has been ordered by the order dated 21st December, 2005 is that the cable operators and cable service providers shall not carry in cable service the films other than the films sanctioned for the unrestricted public exhibition by CBFC. By our order dated 23^d August, 2006, we have clarified the order dated 21st December, 2005 by observing that the order dated 21st December, 2005 does not restrict exhibition of films certified "U" or "U/A" or "V" or "V/UA" by CBFC. We have further held that the broadcasters (foreign or otherwise) and DTH service providers are bound to follow the programme and advertising code and the order dated 21st December, 2005. The broadcasters, DTH service providers, cable operators, cable service providers and MSOs are not restrained in any manner whatsoever by virtue of the order dated 23^d August, 2006 in carrying in cable service "U" and "U/A" films sanctioned by CBFC as such films are films sanctioned for unrestricted public exhibition.

7. We, accordingly, direct all concerned (broadcasters or the cable operators) to remove with immediate effect the message being flashed across nine channels viz. (i) AXN, (ii) HBO, (iii) Star Movies, (iv) Star Gold, (v) Star One, (vi) Zee Cinema, (vii) Set Max, (viii) Sahara One, (ix) Sahara Filmy displaying "This channel is off air due to the Hon'ble High Court of Mumbai". This misrepresentation cannot be allowed to be displayed and has to be

discontinued forthwith.

We order accordingly.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)